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SUPREME COURT OF THE UNITED STATES

DEWAINE POINDEXTER *v.* OHIO

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF OHIO

No. 87-7311. Decided October 17, 1988

The petition for a writ of certiorari is denied.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins,
dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL J., dissenting), I would grant the petition for certiorari and vacate the death sentence in this case. Even if I did not take this view, I believe the Court should reserve judgment on this petition pending our disposition of *Dugger v. Adams* (No. 87-121), cert. granted — U. S. — (1988). The petitioner here, like the petitioner in *Adams*, claims that a jury instruction stressing the preliminary nature of the jury's decision so minimized the jury's sense of responsibility for its decision and so increased the likelihood of a recommendation of death as to be unconstitutional under *Caldwell v. Mississippi*, 472 U. S. 320 (1985), despite the accuracy of the instruction. Notwithstanding the similarity of the petitioners' claims, the Court denies certiorari in the instant case without waiting to consider what light the *Adams* case will shed on the issues here. Because I consider such haste inappropriate, particularly when a man's life hangs in the balance, I dissent.

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